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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,194	10/13/2005	Werner Ehrmann	2923-733	1264
6449 7590 08/23/2010 ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005				
EXAMINER WATKINS III, WILLIAM P				
ART UNIT 1783		PAPER NUMBER		
NOTIFICATION DATE 08/23/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary

Application No.

10/553,194

Applicant(s)

EHRMANN ET AL.

Examiner

William P. Watkins III

Art Unit

1783

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18, 20-23 and 25-42 is/are pending in the application.
- 4a) Of the above claim(s) 31-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18, 20-23, 25-30 and 37-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notes of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 41-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear in these claims if the step of putting a label on a battery or the combination of battery with a label is claimed. It is unclear how a given label can be determined to be beyond a battery if the specific size and shape of the battery are not given or if the battery is not part of the combination or steps.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 18, 19-23, 25-30 and 37-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Will et al. (U.S. 4,801,514) in view of Ast (U.S. 6,248,427 B1) further in view of Zaborney (U.S. 4,608,323) still further in view of Floyd (U.S. 5,320,893) and Barth et al. (U.S. 6,294,233).

Will et al. teaches in Figure 3, a paper carrier layer (element 8) with a deposited metal layer (element 22), and a primer layer (element 24) that joins the imprint layer

(element 10) to the metal layer, and a cover layer (element 14) on top of the imprint layer. An adhesive layer (element 6) and release layer are below the paper carrier layer (element 8). Will et al. fails to teach that the carrier layer for the metal layer may be a plastic film. Ast teaches that carrier layer for a metal film maybe plastic or paper (col. 4, lines 1-5). Will et al. in view of Ast fails to teach that the metal layer may be end sealed against corrosion by an adhesive. Zaborney teaches a metallic printed layer on a substrate of a label that is covered with a top layer and sealed around the edges with adhesive to prevent corrosion of the ink layer (see Figure 2b, element 11, abstract, col. 3, lines 50-60). Will et al. in view of Ast still further in view of Zaborney fails to teach a seal near the edge of the metal layer comprised of a cut in the metal layer near the edge of the label laminate that is filled with an adhesive seal. Floyd teaches sealing of a metallic layer on a substrate between two plastic layers by cutting the metal layer near the edge to form a gap, with plastic from the outer layer filling the gap when the layers are laminated with heat and pressure (abstract, Figures 1-4). Barth et al. et al. teaches using a liquid resin adhesive which cures to fill a gap at the end of a metal layer subject to corrosion (abstract).

The instant invention claims the formation of a gap in a substrate and metal layer around the edge of a label and filling the gap with an adhesive or flow from a plastic laminating layer. It would have been obvious to one of ordinary skill in the art to have used a plastic film layer in place of the paper substrate layer of Will et al. because Ast teaches the equivalent function of these materials in a substrate layer for a metal layer. It further would have been obvious to one of ordinary skill in the art to have provided an

adhesive edge seal of the metal layer of Will et al. in view of Ast in order to prevent corrosion because of the teachings of Zaborney. It still further would have been obvious to one of ordinary skill in the art to have sealed the edge of the metal layer of Will et al. in view of Ast still further in view of Zaborney by cutting a gap in the metal and substrate layers near the edge of the label, and filling it with resin adhesive or flow of a plastic layer tie layer (elements 24 and 6 of Will et al.) as an alternate to edge sealing because of the teachings of Floyd and Barth et al. Cutting an individual label from a larger sheet is conventional in the label art.

4. Applicant's arguments with respect to claims 18, 19-23, 25-30 and 37-42 have been considered but have not been found to be persuasive.

Applicant argues the combination of the Floyd and Barth et al. with the other references as before. The examiner maintains his position. Regarding a strip shape cut not being taught, several of the dependent method claims allow for punching to form the strip shaped cut which is the method of Floyd. The instant claims do not exclude punching all of the way through the substrate layer. Regarding the declaration evidence being unexpected, the examiner is unclear how this evidence compares to the closest prior art of an edge seal as taught by Floyd. It would seem merely to show that an edge seal works better to prevent corrosion than no edge seal, which is the teaching of Floyd. Regarding the expert opinion that mechanical machining of a metal layer would prevent a seal, this again is contrary to the teaching of Floyd where such machining by a punch still results in a seal being formed by a cover layer.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WW/ww

August 17, 2010

/William P. Watkins III/

Primary Examiner, Art Unit 1794